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Wills and Probate

Winter 2014



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your firm's colours

DISPUTES OVER PROBATE TRIPLE AS PEOPLE MAKE DIY WILLS

One of the problems that can arise out of DIY wills was highlighted by data released by the High Court recently.

The figures show that the number of claims concerning the mishandling of a deceased person's estate tripled in the space of a year. There were 368 claims in 2013, while the figure was just 107 in 2012.

It's thought many of the claims were as a result of people having made a DIY will and appointed friends or family as

executors rather than involving a solicitor. Unfortunately, it can turn out to be a false economy. Claims against executors range from theft of assets from the deceased person's estate to fraudulent distribution of assets that favour one beneficiary unfairly, especially when second marriages and complex extended families may be involved.

In some cases, an amateur executor may be tempted to purposely misinterpret the will so that it meets what he thinks the deceased person should have said.

Of course, many executors do a perfectly good job and even those who get it wrong aren't necessarily acting out of greed or malice. In many cases it is possible that honest mistakes will be made.

However, this doesn't lessen the heartache and stress for the grieving family who may have to take court action to put things right.

Please contact us for more information about the issues raised in this article or any aspect of wills and probate.

COUPLE CAN TEAR UP BADLY DRAFTED TRUST

A couple have been granted permission to tear up a badly drafted trust, after an error left the wife unable to benefit from it.

The husband had set up the trust several years ago. He wrote a letter to his bank stating his wishes that the trust was to benefit his wife and children in the future.

The problem arose when the wife made a payment into the trust. This meant that, according to law, she became a settlor and could therefore no longer be

one of the beneficiaries. This error was recognised and in an attempt to rectify it, the couple realised there was also a major problem with the terms of the trust.

It stated that any benefit from the trust could be paid to the beneficiaries, but not to the husband or his wife.

The couple took the case to the High Court, and requested permission to amend the trust in line with their wishes. The court stated that it had to be satisfied

that it was just and appropriate to grant permission to rescind the settlement.

In this case the letter written by the husband was a fair indication that errors had been made in the drafting of the trust.

Please contact us if you would like more information about the issues raised in this article.



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GOVERNMENT SHELVES ONLINE LASTING POWERS OF ATTORNEY

The government has shelved its controversial plans for an online system for creating lasting powers of attorney (LPA). The decision follows concerns raised by the Law Society and others that a fully digital system could be open to fraud and abuse.

LPAs enable you to nominate someone in advance to look after your affairs should you become incapable of doing so yourself at some point in the future. They have become increasingly popular in recent years as people plan to protect their interests as they get older.

Ministers wanted to streamline the process of setting up an LPA by creating a fully online service. A digital system was introduced last year but it still required users to print out and physically sign the appropriate forms. The Ministry of Justice (MoJ) had planned to remove this requirement so the whole process could be done online with the use of electronic signatures.

However, the Law Society and several leading lawyers expressed concern that this would leave the process open to abuse. The MoJ has now decided to shelve the proposals for the time being so that more research can be done to see if a secure and reliable online system can be developed.

The President of the Law Society, Andrew Caplen, welcomed the decision. He told the Law Gazette: "There are real problems to be overcome to ensure that vulnerable people are properly protected before electronic signatures can be accepted."

However, the government remains committed to the value of LPAs. Justice Minister Simon Hughes said: "LPAs give people the peace of mind of knowing that

if they ever lose capacity, the important decisions about their life can be taken by someone they have chosen and can trust."

Please contact us if you would like more information about any aspect of lasting powers of attorney.



MONEY GAINED THROUGH UNDUE INFLUENCE MUST BE REPAYED

A woman has been ordered to return money she received from her mother after a court ruled she gained it through undue influence.

The case involved a mother who had made a will that included two houses. In the will she shared her estate between her siblings, children and grandchildren. She had previously transferred £290,000 to one of her daughters and son-in-law. She then sold her houses and transferred the proceeds - £410,000 - to the couple as a loan on very advantageous terms.

The couple used the money to buy a property to live in with the mother. The property was only in their names.

The mother died soon after and the couple sold the property and repaid £410,000 to the mother's estate. However, they retained the £290,000, together with the profit they had gained from the sale of the property.

The court ruled that the transactions had been made because of the daughter's undue influence on the mother. It ruled that the couple would have to repay enough money to ensure that the other beneficiaries of the will would receive what they would have received before the houses were sold and the gift of £290,000 was made. The decision was upheld in the Court of Appeal.

Please contact us for more information about the issues raised in this article.

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This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.

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